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PP RUEHAG RUEHDF RUEHIK RUEHLZ RUEHROV RUEHSL RUEHSR  
DE RUEHRL #0927/01 2151529  
ZNR UUUUU ZZH  
P 031529Z AUG 09  
FM AMEMBASSY BERLIN  
TO RUEHC/SECSTATE WASHDC PRIORITY 4828  
INFO RUCNMEM/EU MEMBER STATES COLLECTIVE PRIORITY  
RUCNFRG/FRG COLLECTIVE PRIORITY  
RUCNDT/USMISSION USUN NEW YORK PRIORITY 0815  
RUEHGV/USMISSION GENEVA PRIORITY 1527

UNCLAS SECTION 01 OF 05 BERLIN 000927

SENSITIVE

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E.O. 12958: N/A  
TAGS: [PHUM](#) [GM](#) [UN](#)  
SUBJECT: GERMANY HAS FAR-REACHING SOCIAL AND LEGAL  
STRUCTURES TO COMBAT TORTURE

REF: STATE 070129

¶1. (U) Summary: This cable is in response to reftel regarding initiatives to prevent torture. Germany has a variety of mechanisms in place to prevent torture domestically and abroad, as well as to assist victims of torture. Domestic laws regulate the immigration of torture victims and give Germany's federal prosecutor jurisdiction over torture crimes around the world. As a member of the European Union (EU), Council of Europe (CoE), and the United Nations (UN) Germany is party to several international treaties and committees aimed at preventing torture worldwide. It is a party to the Rome Statute of the International Criminal Court (ICC), which can exercise jurisdiction over crimes of torture. Germany also provides foreign assistance aimed at preventing torture worldwide both through international organizations and through direct aid. Finally, Germany has a very advanced network of treatment centers providing rehabilitation for victims of torture within Germany and internationally. End summary.

¶2. (U) Meetings with the Human Rights Watch Germany, Berlin Treatment Center for Torture Victims, German Institute for Human Rights, and Bundestag Human Rights and Humanitarian Aid Committee have provided much of the information regarding what approaches Germany is taking to prevent and treat torture.

#### Asylum and Prosecution

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¶3. (U) The Basic Law of the Federal Republic of Germany (1949) and the Penal Code reflect Germany's commitment to preventing torture. Article 104 Para. 1 Clause 2 of the Basic Law forbids a person in custody from being subjected to mental or physical mistreatment. Germany's Penal Code characterizes involvement by public officials in acts of torture as a criminal offense. Furthermore, testimony obtained under torture may not be used.

¶4. (U) The Asylum Procedure Act (1993) and Residence Act (2004) in Germany protect individuals from torture. The Asylum Procedure Act (Section 13) allows for applications for asylum from individuals who want protection from political persecution or cannot return to their own country for reasons specified in Section 60 of the Residence Act, including humanitarian reasons. Section 60 of the Residence Act states that a foreign national may not be deported to a country if there is a threat that he or she will face torture or other cruel, inhuman or degrading treatment or punishment (such as capital punishment) in that country. Such persons are given a residence permit. This gives individuals protection from dangers not covered under asylum protection.

¶15. (U) Foreign nationals may also qualify for asylum even if they have been tortured in the past and no longer face a threat of torture in the country of origin. This is possible if the foreign national has physical and/or psychological medical problems resulting from torture and requiring treatment, but proper treatment would not likely be provided in the country of origin. These individuals would also qualify for a residence permit to be able to receive treatment in Germany. The Residence Act also entitles immigrants who have received their first residence or settlement permit on humanitarian grounds to an integration course, particularly if they do not have simple oral language skills.

¶16. (U) An alternative option for rejected asylum-seekers is a "toleration" ("Duldung") permit. This can be granted to "rejected asylum-seekers who cannot be returned to their country of origin for legal, technical, or humanitarian reasons" such as the risk of facing torture or requiring medical treatment that would not be provided in their country of origin. "It does not amount to the right of residence as it simply suspends deportation on a temporary basis for the maximum period of six months at a time. Accordingly, persons with a "toleration" permit have restricted access to health care, education and work while their right of movement is also severely limited. In 2006, there were 186,000 people living in Germany on a toleration permit. More than 100,000 of them had already stayed longer than 6 years and almost 54,000 for over a decade."

¶17. (U) German law also provides for universal jurisdiction, which allows the German federal prosecutor to charge someone

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with torture anywhere in the world. The German Code of Crimes against International Law (CCAIL) went into force on 30 June 2002 and establishes universal jurisdiction over crimes of genocide, crimes against humanity and war crimes. Torture qualifies as both a crime against humanity and a war crime. The concept of universal jurisdiction is motivated by the principle that some crimes including genocide, war crimes, and crimes against humanity are so serious that they amount to an offense against the whole of humanity and therefore all states have a responsibility to bring those responsible to justice.

¶18. (U) The Geneva Conventions and the Convention against Torture place a legally binding obligation on states that have ratified them to exercise universal jurisdiction over persons accused of grave breaches of the Geneva Conventions and torture or to extradite them to a country that will. This guards against the possibility that an alleged criminal might not be prosecuted in the country where the crime has taken place. Instances of this would be (1) where the national legal system is weak following a conflict, (2) that country has granted amnesty to the alleged criminal, (3) there are political reasons for not prosecuting the alleged criminal in that country, (4) the alleged criminal may not receive a fair trial, or (5) the alleged criminal risks receiving the death penalty in that country.

¶19. (U) The German federal prosecutor will only exercise universal jurisdiction if the competent authorities of the territorial state, or of the state of nationality of the suspect or victim, refrain from carrying out a genuine investigation and where the ICC or another competent international tribunal does not investigate the case. If the suspect's presence in Germany allows an investigation to be efficiently carried out and no other country or court is carrying out a genuine investigation, then the federal prosecutor is obliged to begin an investigation. Both victims and the accused are entitled to legal aid if they are unable to pay for their legal representation.

¶10. (U) Recently, according to Human Rights Watch, "Germany's Ministry of Justice has created three dedicated

positions in the general prosecutor's office to investigate cases of genocide, crimes against humanity, and war crimes that fall under Germany's universal jurisdiction law. In addition, the Federal Criminal Police is establishing a specialized war crimes unit with seven investigators working on international crimes."

¶11. (U) Germany utilizes its own justice system to enforce its laws forbidding torture within its own territory. This is illustrated by the Daschner case in Frankfurt am Main, Germany. Wolfgang Daschner, a police officer, was interrogating a man in police custody suspected of kidnapping. Daschner threatened the suspect, Magnus Gaefgen, with torture in order to learn the whereabouts of the kidnapped child. Even though Daschner did not actually use torture, the court ruled Daschner guilty of a misdemeanor of coercion. This demonstrated that even the threat of torture is not acceptable.

#### CoE, EU, UN and Other Treaties

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¶12. (U) As a member of the EU and CoE, Germany implements treaties in force under these two organizations in addition to other international treaties concerning the prevention of torture worldwide. These treaties include:

- The Third Geneva Convention also known as the Geneva Convention Relative to the Treatment of Prisoners of War (1950)
- The Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (1953)
- The Council of Europe Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1953)
- The International Covenant on Civil and Political Rights (1976)
- The European Union Charter of Fundamental Rights (2000)
- The European Union Guidelines on Torture (2001)
- The Rome Statute of the International Criminal Court (2002)
- The European Commission's ban on trade in instruments of torture (06/30/05)
- The Treaty of Lisbon (expected to enter into force

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end of 2009)

¶13. (U) The CoE Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment created the Committee for the Prevention of Torture (CPT). Germany exhibits adequate compliance with this convention and the CPT, according to the State Department's 2008 Human Rights Report on Germany. This report shows that Germany is open to investigations of torture and other cruel, inhuman or degrading treatment or punishment in its own detention centers. Germany allowed visits by independent human rights observers and visits by the CPT in 2005. According to the State Department's Human Rights Report, "the CPT criticized conditions under which one German prison held immigration detainees and raised concerns about the level of violence and intimidation among prisoners observed at three prisons. The government responded in detail to the CPT's recommendations, comments, and requests for information in its report to the CPT in April 2007." This is evidence of Germany's willingness to cooperate and comply with the CPT on issues of torture and other cruel, inhuman or degrading treatment.

¶14. (U) As a member of the UN, Germany implements the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT, 1984) and the Optional Protocol to UNCAT (OPCAT, 2002). The Federal Agency for the Prevention of Torture is Germany's national mechanism for the prevention of torture based on Article 3 of OPCAT. The Federal Office for the Prevention of Torture was established on 20 November 2008 with a statutory notice

issued by the Federal Ministry of Justice (Federal Bulletin, Nr 182, S. 4277). The Agency is neither a non-governmental organization, nor a lower authority of any ministry. The Agency is organizationally independent and not subordinate to any Federal Ministry, although it is financed through the Federal Ministry of Justice. Thus, the management of the Agency underlies neither a legal nor a general supervision.

¶15. (U) In order to prevent torture and ill-treatment, the Agency is establishing a system of regular and unannounced visits to places of detention as specified under Article 4 of OPCAT. The Agency directs its attention to grievances found and submit recommendations for improvement. The Agency reports annually to the Federal Government and Parliament on its activities. Furthermore, the Agency can submit proposals and observations to existing or draft legislation. See the website of the Federal Agency for the Prevention of Torture: <http://www.antifolterstelle.de>.

#### Foreign Aid

¶16. (U) Germany contributes to the UN Voluntary Fund for Torture Victims (UNVFT). General Assembly resolution 36/151 established the UNVFT on 16 December 1981 to receive donations from governments, NGOs, and individuals in order to provide psychological, medical, social, legal, economic, humanitarian, and other assistance to torture victims and their family members. This is the second largest source of funding for the rehabilitation of torture victims after the European Instrument for Democracy and Human Rights. The last year for which the UNVFT has public records of Germany's contribution is 2002, in which Germany donated 122,066 USD (or 130,000 Euro). According to the State Report of the Federal Republic of Germany under the UN Human Rights Council's Universal Periodic Review of 2008, Germany plans to continue to financially support national and international programs for the treatment of torture victims as well as continue its financial support for the UN Voluntary Fund for Victims of Torture in 2009.

¶17. (U) In addition, the German government allocated about 80,000 USD to Kyrgyzstan to provide assistance for victims of torture and to monitor cases of torture in 2008. This money will be channeled into maintaining the activities of a working group that was set up recently. This group, along with Ombudsman Tursunbek Akun, will be involved in protecting the rights of citizens. On 8 June 2008, the foundation Voice of Freedom signed a funding agreement with the German government to create national mechanisms for preventing and investigating instances of torture.

#### Rehabilitation for Torture Victims

¶18. (U) The National Association of Psychosocial Centers for

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Refugees and Victims of Torture (Bundesweite Arbeitsgemeinschaft der Psychosozialen Zentren fuer Fluechtlinge und Folteropfer e.V. or BAFF) is a concentration of facilities and projects that provide social, psychological, and medical rehabilitation for refugees and victims of torture and other organized violence. BAFF started out as a series of national meetings and symposia but in 1997 developed into a nationwide alliance of psycho-social centers in Germany. The objectives of BAFF are to create a network of treatment centers at the national, European, and global levels between states, NGOs and other actors; benefit from the exchange of treatment methods, technical resources, and professional standards between centers and external experts; create working groups on standards of treatment; work on lobbying and public relations; train professionals inside and outside of treatment centers; and strengthen the protection of human rights; have an annual federal conference; and improve the lives of people who have suffered

traumatizing experiences.

¶19. (U) BAfF offers the opportunity for victims of torture and refugees to anonymously tell their stories in public and thereby raise awareness about the human rights abuses they have suffered from. BAfF also undertakes fundraising to be able to pay for the treatment of torture victims and refugees. BAfF has at least one member organization in each of the 16 German states. There are currently 28 members including 24 treatment centers as well as initiatives and facilities.

¶20. (U) An international network similar to BAfF is The Network of European Treatment and Rehabilitation Centers for Victims of Torture and Human Right Violations in which over 100 treatment centers are represented. BAfF and its members are part of this network. This network maintains large annual networking conferences, working groups on specific issues, a clinical discussion group, and ongoing dialogue and coordination via the internet. Participants include psychotherapists, doctors, psychologists, social workers, lawyers and administrators. Working groups have been established regarding assessment and documentation, research, fundraising, legal issues and advocacy, children, and clinical issues.

¶21. (U) Another similar international network is the International Rehabilitation Council for Torture Victims (IRCT). A few individual German treatment centers are members of this organization, although BAfF is not a member of the IRCT. The IRCT is an umbrella organization for 142 member treatment centers and programs that support the rehabilitation of torture victims and work toward preventing torture worldwide. The IRCT works with governments, human rights organizations, health professional organizations, and intergovernmental organizations. Its objectives are to raise awareness of the rehabilitation need of victims of torture, promote and support the establishment of new treatment centers, work to prevent torture and end impunity, record the impact and consequences of torture, and work to increase funding for rehabilitation centers and programs around the world.

¶22. (U) The Berlin Treatment Center for Torture Victims (BZFO) is a good example of one of the treatment centers that is part of BAfF, the Network of European Treatment and Rehabilitation Centers for Victims of Torture and Human Rights Violations, and the IRCT. The BZFO treats children, adolescents, adults, and their families from over 50 countries who have suffered from physical problems, long-term psychological ailments, and psychosomatic disorders. Medical, psychiatric, and psychotherapeutic treatments are offered in the day-clinic and out-patient care. Specific types of therapy include family therapy, client-centered therapy, psycho-dynamic therapy, behavior therapy, coherent perception therapy, art therapy, music therapy, physiotherapy, and garden therapy. Knowledge of trans-cultural psychotherapy and psychiatry are very important as are interpreters who build the lingual and cultural bridges with patients. Relevant research at BZFO is supported by the Hamburg Institute for Social Research.

¶23. (U) About 50% of funding comes from the public sector (Ministry for Family, Senior Citizens, Women and Youth; United Nations High Commissioner for Human Rights; and European Commission). The other approximately 50% is donations from foundations, corporations, private donors, and fundraising efforts. Despite government funding, BZFO

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remains neutral. This is the only treatment center in Germany which receives government funding. BZFO employs social workers to assist patients in dealing with authorities or while making a Social benefits claim; informs patients of services available to them at BZFO or other refugee assistance organizations; puts patients in contact with



counseling agencies, doctors, or lawyers; and informs them of schooling, training, and employment opportunities. BZFO works with government officials, other treatment centers around the world, NGOs, social workers, lawyers, nurses, prisons, and therapists not only to help patients with asylum requests but also to provide treatment and publicize its services. BZFO also lobbies to government officials in order to get more state-funded housing for torture victims and more financial aid to treatment centers.

¶24. (U) Every German president has visited the center at least once. Victims can seek out the treatment center on their own but must be assigned by the government for official treatment. Victims must have an allowance to live permanently or temporarily in Germany in order to receive treatment. Waitlists for treatment sometimes have up to 200 people. Torturers themselves may not receive treatment here. BZFO also works to raise awareness about torture, for instance, through an art auction that will take place in September and through conferences with NGOs including Amnesty International.

¶25. (U) The BZFO, the University of Zurich, the Kirkuk Center for Torture Victims in Iraq, the University of Amsterdam, and Interapy Nederland B.V. are collaborating on a research project which provides internet-based psychotherapy for post-dramatic stress disorders in Arabic. Patients include but are not limited to torture victims. It is free of charge to a certain number of patients. According to this program's website, interapy is a standardized, internet-based writing therapy conducted exclusively through e-mail and is based on a scientifically tested model with a defined fixed sequence of interventions. This project was started in an effort to help the Kirkuk Center for Torture Victims expand its services. Visit the website of this program at [www.virtual-traumacenter.org](http://www.virtual-traumacenter.org).

#### Other Organizations

¶26. (U) The German Institute for Human Rights is a national mechanism that does research and creates policy recommendations for the government for responding to general human rights themes around the world. Regarding torture, one of their main goals is widespread ratification of OPCAT in addition to the acceptance of and provision of treatment for refugees. Two areas of which the institute recommends stronger consideration are police experts and the German Federal Armed Forces. Police experts should be consulted regarding how policemen deal with mistakes they might make as well as how policemen are trained with respect to torture. The German Federal Armed Forces undergo training in peacekeeping operations. This training consists of simulations of peacekeeping operations where Armed Forces members must consider how human rights play a role in such situations.

¶27. (U) Other things the institute focuses on include court decisions, how the state reacts to and controls torture cases, talking to doctors, social workers, and other professionals on torture. The institute employs a broad definition of torture, including not only extreme violence under the authorization of a government official but extended to other forms of extreme violence. The institute is funded by the Ministry of Justice, the Ministry of Economic Cooperation and Development, and the State Department. Despite the government funding, however, this is a private national agency and is neutral.  
Bradtke